

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON HUMAN SERVICES

Call to Order: By **CHAIRMAN BILL THOMAS**, on February 16, 2001 at 3 P.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Bill Thomas, Chairman (R)
Rep. Trudi Schmidt, Vice Chairman (D)
Rep. Tom Dell (D)
Rep. John Esp (R)
Rep. Tom Facey (D)
Rep. Daniel Fuchs (R)
Rep. Dennis Himmelberger (R)
Rep. Larry Jent (D)
Rep. Michelle Lee (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Rick Ripley (R)
Rep. Clarice Schrumpf (R)
Rep. Jim Shockley (R)
Rep. James Whitaker (R)

Members Excused: Rep. Roy Brown, Vice Chairman (R)

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 583, HB 549, HB 582, HB 553, 2/13/2001
Executive Action: HB 510, HB 237, HB 583, HB 549, HB 582

EXECUTIVE ACTION ON HB 510

Motion: REP. FUCHS moved that HB 510 DO PASS. {Tape : 1; Side : A; Approx. Time Counter : 0 - 1.3}

Motion/Vote: REP. NOENNIG moved that HB510 BE AMENDED 51002. Motion carried unanimously.

Discussion: The amendment, number 51002, is a change in spelling. Mr. Niss explained that a noun had been used instead of a verb and the amendment corrects that. The question was called for. {Tape : 1; Side : A; Approx. Time Counter : 1.3 - 5.3}

Discussion: The amendment is number 51002. Rep. Noennig said that he had been concerned that the authorization for doing the procedure didn't include any language that required someone to be trained by anyone other than the person receiving the nutrition or their parent or guardian. There was no language saying that these people had to be trained even though they could train someone else, so he suggested the language proposed in this amendment. A concern was raised about the Board of Nursing possibly adopting regulations defining what training is. Rep. Noennig said that the bill's sponsor does not support this amendment, and he will vote against his own amendment but wanted the committee to have a chance to look at it. This bill is a definition of what is and what is not nursing. It is not a definition of what is and what is not acceptable practice. If someone is negligent or does something wrong, he doesn't think that this bill as written excludes them from being responsible. If they train someone and do an improper job of training and an injury results, he thinks they're responsible. All this does is exempt it from the auspices of the Board of Nursing. Rep. Noennig explained the specifics of the amendments in detail. Rep. Facey called for the question.

Motion/Vote: REP. NOENNIG moved that HB 510 BE AMENDED. Motion failed 0-18. {Tape : 1; Side : A; Approx. Time Counter : 5.3 - 9.9}

Motion: REP. NOENNIG moved that HB 510 DO PASS AS AMENDED.

Substitute Motion: REP. FACEY made a substitute motion that HB 510 BE AMENDED.

Discussion: Rep. Facey explained this amendment, which has no number. Schools don't have to employ school nurses, but if the school has a nurse or contracts with a nurse, the nurse will provide the tube feeding. Rep. Schmidt said she believed the sponsor opposed this amendment. Rep. Raser had asked parents about this amendment. They were concerned that it might be construed that

a school might have to hire a nurse to do that. The language of the bill simply exempts certain procedures from being under the scope of nursing. It doesn't say that schools have to do anything. The question was called for.

Substitute Motion/Vote: REP. FACEY made a substitute motion that HB 510 BE AMENDED. Substitute motion failed 2-16 with Facey and Shockley voting aye.{Tape : 1; Side : A; Approx. Time Counter : 9.9 - 11.1}

Motion: REP. NOENNIG moved that HB 510 DO PASS AS AMENDED.

Discussion: Rep. Himmelberger said some people had expressed concerns to him about administering medications, the ability of people to properly measure the medications, and the issue of liability. Rep. Raser said it is no more complicated than administering medications orally. Schools already have policies and procedures for administering medications. Rep. Himmelberger wondered if the medications that might be administered under provisions of the bill could be life threatening if not administered properly. Rep. Raser said this would vary according to the child. Usually it is something to manage certain conditions and not life threatening. Persons with life-threatening conditions requiring medication would not be likely to be in a school or day care program. Rep. Ripley said that by law, schools cannot dispense medicines of any kind, even aspirin; only a school nurse can do that. Rep. Dell said that the nurses and doctors who had testified at the hearing had reassured him about how safe and simple this procedure is, and he wouldn't think there would be a risk. Rep. Fuchs said he had noted during the hearing that testimony by an opponent included the statistic that 30.5 percent of the deaths in health care facilities are attributed to medication errors made by physicians and nurses. Rep. Schmidt called for the question.

Motion/Vote: REP. NOENNIG moved that HB 510 DO PASS AS AMENDED. Motion carried unanimously.{Tape : 1; Side : A; Approx. Time Counter : 11.1 - 22.6}

EXECUTIVE ACTION ON HB 237

Motion: REP. SCHMIDT moved that HB 237 BE TAKEN FROM THE TABLE.{Tape : 1; Side : A; Approx. Time Counter : 22.6 - 24.5}

Discussion: Rep. Schmidt said she had additional information on the bill and a change in the fiscal note and would like to have it removed from the table for discussion purposes. Chairman Thomas said the committee had somewhat of a procedural problem. Rep. Esp

explained that due to the computer breakdown, he was unaware until today that his mental health bill was scheduled for a hearing today, and his proponents were scheduled to testify in the Senate hearing on other mental health bills at the same time. He requested that his bill be heard at this time so at least some of the proponents might be available to testify. **Rep. Schmidt withdrew her motion.**{Tape : 1; Side : A; Approx. Time Counter : 24.5 - 30}

HEARING ON HB 583

Sponsor: REP. JOHN ESP, HD 25, Big Timber

Proponents: Al Davis, Mental Health Assn. of Mt.

Opponents: None

Opening Statement by Sponsor:

REP. JOHN ESP, HD 25, Big Timber, said that this bill allows somebody who is chronically mentally ill to give direction to a facility to give information to family members. Chronic mental illness is a cyclical illness, and a person feels good for awhile, then spirals down and ends up in a facility for awhile. The person is good for awhile, but the cycle happens over and over again. When the person crashes and ends up in the hospital, they're usually uncommunicative, sometimes rebellious, sometimes resistant to treatment and resistant to talking. Consequently, when the person disappears because they've been taken into a mental health facility, family members don't know for sure where they are. Because of privacy laws, if you call to ask if a family member is there, they can't tell you. This bill gives the patient the option to direct that information to be released in advance, when they are coherent and competent. It simply says that when I become incapacitated, here's who I want you to call and let them know I'm here. It can include other issues that are noted in the bill.{Tape : 1; Side : B; Approx. Time Counter : 0 - 1.8}

Proponents' Testimony:

Al Davis, Mental Health Assn. of Mt., said they strongly support this bill. It actually puts the destiny of mentally ill or potentially mentally ill people in their own hands. Decisions are being made by them when they are of sound mind. Many of those decisions as listed in the bill are things we all would be concerned about were we to end up in a situation as the sponsor has described. We never know when we may be in a situation where we may be able or might want to initiate some of the requirements and demands as stated in the bill. It is much the same as the life support system for medically terminal patients. Consumers need to

be in a position where they can make decisions about what's going to happen to them when they can't make those decisions for themselves. **{Tape : 1; Side : B; Approx. Time Counter : 1.8 - 4.3}**

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

Rep. Newman asked the sponsor if the directive is actually covered on page 1, lines 18 through 21. **Rep. Esp** said yes. **Rep. Newman** asked if the directive simply states who should be notified when the person enters the facility, who may or may not visit while the person is in the facility, and how long the directive lasts. **Rep. Esp** said basically that is correct. There are in other states other issues that can be covered under mental health directives. This bill attempts to give standing in Montana to the specific items that are listed. **Rep. Newman** asked if his understanding is correct that the sponsor made a conscious choice not to include other matters that can be covered in a directive, such as who makes medication determinations, or things along that line. **Rep. Esp** said that is true.

Rep. Himmelberger asked **Rep. Esp** if there is concern here about what legally constitutes sound mind and body, that the person is competent when they makes these decisions. **Rep. Esp** said it is his understanding that that's pretty well outlined in law now and pretty well understood what that is.

Rep. Schmidt asked **Al Davis** if he thinks that the bill is too tight or too loose. **Mr. Davis** said he didn't think it is. He thinks that the issues laid out in the bill, lines 19 through 21, are those items that have been of concern to Montana citizens who have ended up in these situations and questions have arisen from advocacy groups. It appears to him that this covers the issues that seem to be of concern.

Rep. Facey asked **Mr. Davis** about line 27, which states that it can be revoked by the individual orally or in writing, and he wondered if the person might say or write something in anger. **Mr. Davis** said that is always a possibility, but the benefits and the situations where most probably that would not occur make the bill a real advantage to the majority.

Rep. Schrupf asked **Mr. Davis** about the procedure, and wondered when the person would give the information. Do they do that now so that when they go in, everything will be in place; or do they tell this to their doctor? Usually when people go into a facility, they

might be completely incognizant at the time. If they've been in a facility once, and start into recovery, is that the proper time to do this? **Mr. Davis** said his understanding is that the bill could apply to any of us at any time, and that the action would actually take place prior to the admittance to the facility. **{Tape : 1; Side : B; Approx. Time Counter : 4.3 - 10.3}**

Closing by Sponsor:

Rep. Esp said that several other folks had intended to testify in support of the bill, and he would try to get their written testimony prior to executive action on the bill. This is a good bill that addresses a specific problem that many Montana families experience over and over again. It's to the detriment of both ends of the spectrum, because a family member is stuck in someplace that they don't want to be and they're combative, resistant and scared, and nobody they know knows they're there. On the other hand, the family keeps calling and nobody knows where the family member is, so they're worried on that end, and it happens with regularity if you have somebody that has those serious mental problems. He urges passage of the bill. **{Tape : 1; Side : B; Approx. Time Counter : 10.3 - 12.7}**

HEARING ON HB 549

Sponsor: REP. GAIL GUTSCHE, HD 66, Missoula

Proponents: Lois Fitzpatrick, Helena
Judy Smith, Missoula

Opponents: Carol Lambert, W.I.F.E.
Ellen Engstedt, Helena
Pam Langley, Mt. Agribusiness Assn.
Mary Allen, W.E.T.A.

Opening Statement by Sponsor:

REP. GAIL GUTSCHE, HD 66, Missoula, said this bill is about taking a look at what causes breast cancer. Section 1 talks about the increased awareness of environmental links to breast cancer and steps we might do to increase awareness such as developing or obtaining fact sheets and making them available, encouraging industries to contribute to the health of their workers and communities by encouraging alternatives to PVC plastic and striving for zero toxic emissions, and encouraging hospitals to eliminate PVC products. Sections 2 and 3 talk about the grants for breast cancer awareness research, prevention and assessment, which would be available to community-based, non-profit organizations; and about establishing a state special fund account. Section 4 is the

funding mechanism, and the funding would come from cigarette taxes. Under current law, cigarette taxes are allocated as follows: 11.11 percent is put in a state special revenue fund for the operation and maintenance of state veterans' nursing home, 73.04 percent is deposited in the state general fund, and 15.85 percent is deposited in the long-range building program account. The \$50,000 for each biennium for this bill would be taken from the general fund monies. Cigarette taxes total \$11 million, and the amount that goes into the general fund is \$8.2 million. So we are looking for a total of \$100,000 out of that \$8.2 million total, which is less than .6 percent. At a previous hearing, this committee heard from women who had suffered from breast cancer and the devastating effects it has had on their lives. In the next year, around 600 women in Montana will get breast cancer, and between 100 and 150 Montana women will die of breast cancer. Of the women diagnosed with breast cancer, between 50 and 70 percent of them will have none of the known risk factors, such as known exposure to radiation, family history of the disease, diet, child bearing after age 30 or not bearing children at all. Increasingly, research shows that environmental links are tied to breast cancer and other health problems. Some Montana counties have cancer rates higher than the national average, and we don't know why. That's part of what this bill is trying to get at. **EXHIBIT(huh39a01) EXHIBIT(huh39a02) EXHIBIT(huh39a03){Tape : 1; Side : B; Approx. Time Counter : 12.7 - 20.1}**

Proponents' Testimony:

Lois Fitzpatrick, Helena, a breast cancer survivor, said that now approximately 10 to 13 percent of breast cancers are hereditary, leaving a lot of breast cancer that is not hereditary. She was one of the low-risk people with no history of breast cancer in her family, and she didn't meet any of the factors that would make her be considered a high risk person. Where she works in Helena, in the last six years there have been four women who died of breast cancer. Four spouses of men who works where she does have been diagnosed with breast cancer. Mothers of some of these people have been diagnosed with breast cancer. All of these people live in the Helena area and have for a number of years. Where she lives, there are two women on her block of twelve houses who have breast cancer. Others in her neighborhood have other cancers. The neighborhood school has three faculty members with breast cancer. There is obviously something going on, but we don't know what it is, and this bill will help us find out. She urges passage of the bill so we can start understanding breast cancers and stop the anguish, the illness and the death. **{Tape : 1; Side : B; Approx. Time Counter : 20.1 - 21.6}**

Judy Smith, Missoula, said she has degrees in chemistry and molecular biology with a concern on environmental toxics and the

impact on human health, and she is also a breast cancer survivor and has been in conversation with other survivors about what they can do about this epidemic. This bill is important because Montana statistics are startling. Breast cancer survivors talk with others to try and find out what is going on. In Missoula there seemed to be some sort of increase in breast cancer incidence, but they didn't have any documentation. According to statistics, some Montana counties do have a very high rate of breast cancer. The importance of this bill is to direct the Department of Public Health and Human Services to begin to ask some questions and to provide some information for individuals and society in general. In order to do prevention, you must have information, know what the alternatives are, and have access to those alternatives. It is not difficult to show that where we have toxins in our air, water, food, we have increases in breast cancer. That's the question we have here: what is it that we can do about this kind of particular toxic situation that is seeming to cause breast cancer.

EXHIBIT (huh39a04) {Tape : 1; Side : B; Approx. Time Counter : 21.6 - 30}

Opponents' Testimony:

Carol Lambert, Women Involved in Farm Economics (WIFE), said she is also speaking for Montana Cattle Women and the Montana Farm Bureau. They are opposed to this bill for various reasons. One is the grant program referred to in section 2 of the bill, providing grants to community-based, nonprofit organizations for research. They don't feel that is a very scientific approach. Such an organization could be, for example, their WIFE group. That's not a real scientific finding. They also believe that the detrimental effects of any chemical must be weighed against their value and use, and they believe that a lot of the chemicals that a lot of people think could be in question are chemicals that her groups use in order to reduce their costs and make their operations more efficient, which in turn reduces costs for the public and the consumer, and helps put a few more dollars in agriculture's pocket. They would be more receptive if they felt this was going to be scientifically-based research, but they feel that it's not, so these entities oppose the bill. **{Tape : 2; Side : A; Approx. Time Counter : 0 - 1.1}**

Ellen Engstedt, Helena, said that she is a lobbyist but is testifying on behalf of herself as a breast cancer survivor. She presented written testimony in opposition to the bill. **EXHIBIT (huh39a05) {Tape : 2; Side : A; Approx. Time Counter : 1.1 - 3.8}**

Pam Langley, Helena, Montana Agribusiness Assn., said she was speaking as an individual opposed to the legislation. She believes that any public policy needs to be based on solid science. This

legislation is not based on solid science. To base public policy on whim and emotion is not legitimate public policy. **{Tape : 2; Side : A; Approx. Time Counter : 3.8 - 10}**

Mary Allen, Western Environmental Trade Assn. (WETA), said that as Montana struggles with many economic ills, this bill would put a further economic burden on many entities, requiring them to work in areas of research which have already been carried out by the experts who specialize in that area of work. WETA requests that the committee does not pass the unscientific mandate in this bill. **{Tape : 2; Side : A; Approx. Time Counter : 10 - 11.2}**

Informational Testimony: None

Questions from Committee Members and Responses:

Rep. Jent asked the sponsor if there is someone in DPHHS that is an epidemiologist or other such qualified person that could direct the research that the bill contemplates in Section 1, line 13. **Rep. Gutsche** said there is an epidemiologist in the department who could do this, or the department could obtain the information. There are lots of fact sheets out there, so the department wouldn't necessarily have to incur an expense if they didn't want to. **Rep. Jent** said there is some sort of a system with sheets from chemical manufacturers that link a substance with types of harm, and he asked if **Rep. Gutsche** could explain what they are and what they are called. **Rep. Gutsche** said she isn't sure that she knows what that system is, but fact sheets that are developed by particular companies or industries wouldn't necessarily be the kinds of fact sheets we're looking for here. It would be nice to have them developed by, or obtain them from, businesses that are not in the business of either producing or selling chemicals. Someone in the hearing produced one of the sheets in question, and **Rep. Gutsche** said they are Material Safety Data Sheets, but she really isn't familiar with them.

Rep. Schmidt asked the sponsor what community-based nonprofit organizations could do the research, prevention and assessment and where it would be done. **Rep. Gutsche** said the idea was not that the groups could do all of those things, but they could do any of those things. It's not about scientific research but about public awareness. For example, any nonprofit group could do a survey or whatever they wanted, not just scientific research. They wanted it to be community-based so the community in which the problem or perceived problem existed could bring forth the potential proposal. They wanted it to be nonprofit so no big business would come forth if it was about something they're doing at their business. She wasn't thinking of any specific groups or regional groups. **Rep.**

Schmidt asked **Drew Dawson** of DPHHS if anything like this was being done by the Center for Disease Control or any other research projects in this direction. **Mr. Dawson** said there is an extensive amount of research going on nationally relative to the incidence of breast cancer and to the links between breast cancer and various carcinogens. It is a complex area that is worthy of scientific studies. Through the Montana Tumor Registry, they try to identify clusters of cancers, but to do the actual links is a fairly complex procedure to prove that.

Rep. Dell asked **Rep. Gutsche** if science is not involved and any community-based nonprofit can do this, and it would be more along the lines of public awareness, wouldn't there be a concern that a nonprofit might be putting out misinformation in the guise of public awareness. **Rep. Gutsche** deferred the question to **Judy Smith**, who said that the bill is talking about breast cancer awareness research, and basically we're looking at community groups that would be putting in a proposal to an advisory board which has on it epidemiologist, cancer prevention folks, public health folks and survivors. We're piloting an idea of doing community education and outreach. She works for a nonprofit, and they write grants all the time and have to document what they're going to do. The state always asks to see the materials and what will be handed out, so we aren't proposing anything different than the established system right now. The state already has some of these types of programs. We're saying, let's move this into a discussion around what's going on in communities around breast cancer and environmental links.

Rep. Lee asked **Rep. Gutsche** if community hospitals and their related clinics could be included in this and wondered if there needed to be some change in the wording of the bill. **Rep. Gutsche** said she would include it if they came up with the wording.

Rep. Rice asked **Judy Smith** about recent studies that showed a high correlation between women with breast cancer and those who have had abortions. **Ms. Smith** said she didn't have that specifically, but they are concerned with the presence of estrogen in the body, and she'd have to look at the research to see if abortion would be a triggering kind of thing.

Rep. Ripley asked **Ms. Smith** how helpful it would be to have neighbors getting together and visiting about concerns but maybe wouldn't have any reliable or valid information. **Ms. Smith** said that everything would be cleared with the advisory board at the state level, so any particular approach would be written out, clarified and approved.

Rep. Esp asked **Ellen Engstedt** if she thought the money spent on this enterprise would be helpful to any of us, and she said she

didn't think so. \$100,000 is a drop in the bucket as far as even information dissemination. Maybe the money would be better spent in DPHHS with people who are developing and have some kind of scientific background, epidemiologists, for example, and public health officials. She has been a grassroots activist for many years, and believes that misinformation is worse than no information at all. There are a lot of programs and research that are going on. If you're going to disseminate information, do it through the public health officials. She is a survivor, she talks the issues and discusses the issues with others, does research on her own, and she just doesn't see that this is valuable. **{Tape : 2; Side : A; Approx. Time Counter : 11.2 - 30}**

Closing by Sponsor:

Rep. Gutsche said that obviously this is an idea and it probably could use some help, which she would welcome. She found it interesting that there were both proponents and opponents who were breast cancer survivors and who see this on opposite sides of the coin on how it may or may not help. In no way was it intended to be offensive or fear-mongering. She said she has learned this session that the "whereas" clauses don't add anything to a bill, because they may cause confusion and stir people up. She would consider it a friendly amendment to get rid of all of them in this bill, not because she doesn't think they are true, but because other people maybe don't think they are true or are offended by them. It is true that \$100,000 isn't going to go a long way, and it's not intended to. If you did a survey in your town, you might be able to do it for a couple grand. If you wanted to collect data from all the oncologists in your town and look at it and have it reviewed by this panel, you might be able to do that for a couple of grand. These are not huge, scientifically-based research projects, nor were they ever intended to be. So if that language is unclear or confusing, let's fix it. The idea here really is about increasing awareness. We clearly have very high incidences of breast cancer in Montana. To say that we don't need to look at what's going on here is really burying our head in the sand. If this is a vehicle where we could even begin to look, that's great. If other people have other ideas, that's fine too. I really am concerned for the women of Montana. I would encourage us to not only look at treatment. This bill doesn't say anything negative about current traditional treatment, obviously we need that. This is the other side, looking at prevention and why things are happening, and we need that too. She would encourage the committee's favorable disposition of this bill. **{Tape : 2; Side : B; Approx. Time Counter : 0 - 6.3}**

HEARING ON HB 582

Sponsor: REP. GAIL GUTSCHE, HD 66, Missoula

Proponents: Drew Dawson, Dept. of Public Health & Human Services

Opponents: None

Opening Statement by Sponsor:

REP. GAIL GUTSCHE, HD 66, Missoula, said that the idea of this bill is to provide a feasibility report to the legislature on whether or not we ought to develop a chronic disease registry. This would expand the tumor registry. The history of this bill began with her request to expand the tumor registry and adding a chronic disease registry to it. After discussion with the department folks, it was narrowed down to this bill, which is a much different approach that says, let them take a look and see what chronic diseases are out there and come up with a report that would address chronic disease-related data collection systems, what they are or are not doing, the purpose of disease regulations, definition and prioritizing what diseases we need to look at, costs, methods of data collection, and the recommendations of the Pew Environmental Health Commission. That commission came up with a report that is found on the internet that talks about why we need a national health tracking network and why states need them and what we need to find out in terms of chronic diseases. The rest of the bill convenes a task force and directs the department to pursue funding. The Pew folks are interested in funding this. We could certainly get federal funding to do this if we were to do this in Montana. There might be some state funding involved as well. We need to look at chronic diseases for a lot of reasons. There are a lot of chronic diseases on the rise, such as asthma, diabetes, Alzheimer's and Parkinson's, and we don't know why. If we could gather information about why they're on the rise and see where they're clustering, then we can also come up with prevention and treatment programs.
{Tape : 2; Side : B; Approx. Time Counter : 6.3 - 9.9}

Proponents' Testimony:

Drew Dawson, Dept. of Public Health & Human Services, said the department has worked with the sponsor on this bill and they are in favor of it. They think that looking at the feasibility of a chronic disease registry doesn't necessarily mean we're establishing one, but looking at various data sources and how we can combine those into a data set and system to provide usable information about chronic diseases is an important thing to pursue. A fiscal note has been completed and indicates no impact on the department. It's something that they are committed to try and work out. They think it's important to do this, and they would be able to absorb the majority of the costs of this through existing budgets. They have been visiting with the Pew Commission, and if this law passed, it would provide enormous leverage to the

department to pursue funding with the Pew Commission and with CDC to make this happen. Depending on the amount of funding that is secured for this, there may be different levels of detail in the final report. If they aren't able to secure much funding, it may be a very preliminary report; if they're able to secure funding through the Pew Commission, they'll be able to provide a comprehensive report. This information is essential to make intelligent decisions about the prevention and management of chronic disease in Montana, and the department is pleased to support the bill. **{Tape : 2; Side : B; Approx. Time Counter : 9.9 - 13.8}**

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

Rep. Noennig asked the sponsor about the Pew Commission and whether it was somebody's name or an acronym. **Rep. Gutsche** said it is somebody's name. **{Tape : 2; Side : B; Approx. Time Counter : 13.8 - 14.5}**

Closing by Sponsor:

Rep. Gutsche said this would be a great start for us. The department is willing to do this; it would be really good for us to look at this. There are reasons to do tracking. We can identify populations at risk, respond to outbreaks or clusters; we can establish relationships between hazards and disease if there is any. It can guide intervention and prevention policies as well as treatment. She hopes the committee will pass this bill. **{Tape : 2; Side : B; Approx. Time Counter : 14.5 - 15.7}**

HEARING ON HB 553

Sponsor: REP. HOLLY RASER, HD 70, Missoula

Proponents: None

Opponents: Sharon Hoff-Brodowy, Mt. Catholic Conference

Informational Witnesses: Steven Ertelt, Mt. Right to Life

Opening Statement by Sponsor:

REP. HOLLY RASER, HD 70, Missoula, said a constituent had requested this bill, which addresses gestational agreements. The first part

of the title tells basically what the bill is about, assisted reproduction and gestational agreements. Montana already has in the books a code addressing assisted reproduction, so this part of the bill restates that, but it doesn't do anything different. The different part of this bill is in regards to gestational agreements, which she didn't anything about until she did some research. Assisted reproduction basically is sperm donation or egg donation, something that is typically being done right now. The surrogacy is the part that most of us aren't familiar with. A surrogate mother is a woman who carries a child for someone else, usually the infertile couple. There are generally two types of surrogacy, traditional and gestational. In traditional surrogacy, the surrogate mother is artificially inseminated with the sperm of the intended father or the sperm donor, and her own egg is used so she is the genetic mother. We're not talking about that kind of surrogacy in this bill. In gestational surrogacy, which we are addressing, the surrogate mother is not genetically related to the child. The eggs are extracted from the intended mother, or egg donor, and mixed with the sperm from the intended father, or sperm donor, in vitro. The embryos are then transferred into the surrogate's uterus, or the the gestational carrier's uterus. This bill addresses only gestational carriers. It clarifies the rights and responsibilities of both the gestational carrier and the intended parents. In doing the research on how many people might be affected by this bill, she found that it is estimated that one in six couples are infertile. Many of these couples go through the procedures in artificial insemination, artificial reproduction, or conventional adoption. Although adoption is generally a very viable alternative for infertile couples, there are some significant limitations, including not knowing the genetic or environmental history of your child, as well as the desire to have a genetically-related child. This bill doesn't force anyone to do anything; it simply provides a legal means of defining what they can do with the gestational carrier and defining the rights of the child who is born. This is legal in Montana and people are doing it. This bill sets some code that will allow people to go through it very successfully. Properly done, surrogacy is very carefully structured, is a collaborative effort between the infertile couple and the gestational carrier, and can provide a potential for great joy and happiness for all who are involved. There have been an estimated 10,000 to 20,000 cases of gestational carriers, and fewer than one-quarter of one percent have had any litigation over custody. Many states are beginning to adopt regulations such as this. Rep. Raser reviewed the sections of the bill and presented information obtained from the internet regarding the gestational surrogacy program. She said this is not something that is going to affect a high number of people, but the people that it does affect, it will affect very deeply. The purpose of the bill is to make it simpler for all involved for those who would choose to pursue this avenue of having a genetically-related child when they are unable

to do so themselves. It simply lays it out so everyone is protected, the parents, the gestational carrier and especially the rights of the child. **EXHIBIT(huh39a06) EXHIBIT(huh39a07) {Tape : 2; Side : B; Approx. Time Counter : 15.7 - 30}**

Proponents' Testimony: None

Opponents' Testimony:

Sharon Hoff-Brodowy, Mt. Catholic Conference, said they have serious concerns and oppose the bill. For them, the question is not just about regulating reproduction and gestational agreements. The spread of technologies of intervention in the process of human procreation raises very serious moral problems in relation to the respect to the human being from the moment of conception, to the dignity of the person, of his or her sexuality, and of the transmission of life. The desire for a child is a natural one. Children are one of the blessings of a fruitful marriage. The couple affected by sterility acutely feels a desire for children. A child is not an object to which one has a right, nor can a child be considered as an object of ownership. A child is a gift, and is a living testimony of the mutual giving of his or her parents. Using sperm or ovum from a third party violates the rights of the child. It deprives the child of the filial relationship with his or her parental origin and can hinder the maturing of the child's personal identity. Regarding section 8, the consent to assisted reproduction services, number 6 provides for the use and disposition of embryos in the event of divorce, illness, death or other changes and the conditions under which embryos will be considered abandoned, and directions for disposal of the abandoned embryos. Even at the embryonic stage, we are dealing with a human life, and that life cannot be treated as an object of experimentation, be mutilated or destroyed. This section is very broad and contains no directive to address these serious issues. When a state does not place its power at the service of the rights of each citizen, and in particular of the more vulnerable, the very foundations of a state based on law are undermined. The political authority cannot give approval to the calling of human beings into existence through procedures that would expose them to those very grave risks previously noted. She urges a do not pass on the bill. **{Tape : 3; Side : A; Approx. Time Counter : 0 - 7.2}**

Informational Testimony:

Steven Ertelt, Mt. Right to Life, said he did not rise as an opponent because his organization does not take a position on surrogate motherhood. They do have concerns related to abortion and to the destruction of human embryos. The question of abortion comes to mind when considering surrogate motherhood. Can the surrogate

mother, or the gestational carrier, decide to have an abortion at any point during the pregnancy? In section 15, subsection 6, the language says the gestational agreement does not limit the right of the gestational carrier to make decisions regarding the gestational carrier's health or that of the embryo or fetus. That in his mind makes it very clear that the surrogate mother could at any point in the pregnancy decide to have an abortion. If one spouse of the couple that is wanting the surrogate mother to carry their child changes his or her mind, can he ask the surrogate mother to have an abortion? That is a separate issue from the surrogate mother deciding in and of her own volition to have an abortion, but it is another concern for his organization. Section 11 regarding revocation of consent when there is dissolution of marriage or death or other circumstances, seems to be a very vague section. It is unclear as to how many of these issues would be resolved in terms of whether or not an abortion could take place anywhere along this process. Another concern is that of genetic screening, and the question is whether the couple or the surrogate mother would be allowed to have an abortion if genetic screening is done and the couple decides that they do not want a child with mental or physical handicaps. The bill is vague in answering that question. They are also concerned about embryo destruction, as well as "selective reduction," as talked about in section 9, subsection 6, (b), (c) and (d). Often in the case of women carrying two or more unborn children, doctors suggest selective reduction, which is a fancy name for aborting one of the children in the belief that the other children may have a better chance of surviving. His organization does not want to see this happening in the case of surrogate mothers who may be carrying two or more children. His organization believes that life begins at conception or fertilization, and at that point, a unique human being has been brought into life. They don't want to see extra embryos, or extra human beings, destroyed or killed. They do not oppose the bill or oppose surrogate motherhood, but just wanted to bring the concerns to the committee for consideration. {Tape : 3; Side : A; Approx. Time Counter : 7.2 - 12.9}

Questions from Committee Members and Responses:

Rep. Noennig asked the sponsor if this was a model act or was patterned from another statute. **Rep. Raser** said it came from Connecticut and hasn't been passed there but was the work of the Connecticut law revision commission. **Rep. Noennig** asked the sponsor if she had said this did not apply to normal artificial insemination by a husband to a wife. **Rep. Raser** said she probably hadn't phrased that very well, and we currently have a statute that deals with this. This bill repeals 40-6-106, which is the article on artificial insemination. She assumed that the drafter decided it would be easier to enact the whole law, that it had more clear

language. Existing law is a very short section on artificial insemination and the drafter probably felt that this was more comprehensive. **Rep. Noennig** said he was concerned about not seeing anything in the bill about a man who doesn't necessarily intend to be married to the woman and ends up being the father but didn't intend to be a parent and there was no proof of it, and he wondered if there was a procedure where his parental rights are either signed away or terminated and if the bill covered that. **Rep. Raser** asked him to give an example of such a situation. **Rep. Noennig** said he might have changed his mind. **Rep. Raser** said that is covered by the revocation of consent in section 11 on page 6. She thinks that once the consent is signed and both parties are proceeding, that they are intending to have a child by means of assisted reproduction, and they are then bound by that agreement; and if the father changes his mind, he will still be the father if he has signed consent. **{Tape : 3; Side : A; Approx. Time Counter : 12.9 - 18.3}**

Closing by Sponsor:

Rep. Raser said the bill raises all sorts of issues, because the idea of having children by any means other than the traditional means is something that we have a lot of questions and issues with. She respects the view of the Catholic Church and Right to Life, and they are considerations that the committee must think about before making any decisions. She did want to address some of the concerns that were raised. She agrees that the best possible situation for having a child is having both parents naturally conceive a child, but it is not always possible. There are many cases of adoption where there is no filial bond, but we still love that child. Unfortunately, it is the state that decides who is the parent of that child. This is a similar situation to that. The concerns raised by the Right to Life Association should be addressed. One of these was what would happen if somebody decided they didn't want to have the child, would they abort the child. All of this consent is before the transfer of embryos. These are people who have gone through years of trying to have children, then a long time of reflection on what to do next, so they won't go into this without a great deal of thought. The chance of having anyone participating in this consider an abortion when they've spent years and a great deal of money to have a child, simply wouldn't be an issue. As far as disposition of the embryos, there are cases where embryos have been frozen. This bill doesn't address anything that currently doesn't happen. The heart of the bill is simply to recognize that this is an option that some people choose, and let's make it somehow clear so people who do choose to pursue this option have some legal standing so it can be done safely and easily for the best interest of all involved, especially the child. **{Tape : 3; Side : A; Approx. Time Counter : 18.3 - 23.1}**

EXECUTIVE ACTION ON HB 583

Motion/Vote: REP. FUCHS moved that HB 583 DO PASS. Motion carried unanimously. {Tape : 3; Side : A; Approx. Time Counter : 23.1 - 24.8}

EXECUTIVE ACTION ON HB 549

Motion: REP. RIPLEY moved that HB 549 DO PASS.

Motion/Vote: REP. NOENNIG moved that HB 549 BE AMENDED. Motion carried unanimously.

Motion/Vote: REP. SHOCKLEY moved that HB 549 DO PASS AS AMENDED. Motion failed 7-10 with Facey, Fuchs, Jent, Lee, Newman, Raser, and Shockley voting aye.

Motion/Vote: REP. SHOCKLEY moved that HB 549 BE TABLED. Motion carried 10-7 with Facey, Fuchs, Jent, Lee, Newman, Raser, and Shockley voting no. {Tape : 3; Side : A; Approx. Time Counter : 24.8 - 29.2}

EXECUTIVE ACTION ON HB 582

Motion: REP. JENT moved that HB 582 DO PASS.

Motion/Vote: REP. NOENNIG moved that HB 582 BE AMENDED. Motion carried unanimously.

Motion/Vote: REP. JENT moved that HB 582 DO PASS AS AMENDED. Motion carried 10-7 with Esp, Fuchs, Himmelberger, Rice, Ripley, Shockley, and Whitaker voting no. {Tape : 3; Side : A; Approx. Time Counter : 29.2 - 30}

ADJOURNMENT

Adjournment: 6:10 P.M.

REP. BILL THOMAS, Chairman

PATI O'REILLY, Secretary

BT/PO/JB

Jan Brown transcribed these minutes.

EXHIBIT (huh39aad)